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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/570,901	03/07/2006	Thomas Lechner	9733-4	1626
54414 7590 03/30/2011 MYERS BIGEL SIBLEY & SAJOVEC, P.A. P.O. BOX 37428 RALEIGH, NC 27627				
EXAMINER				
TRAN, CON P				
ART UNIT		PAPER NUMBER		
2614				
MAIL DATE		DELIVERY MODE		
03/30/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/570,901

Applicant(s)

LECHNER, THOMAS

Examiner

CON P. TRAN

Art Unit

2614

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 04 March 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-16.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/VIVIAN CHIN/
Supervisory Patent Examiner, Art Unit 2614

Continuation of 3. NOTE: Applicant asserts on pages 7-8, regarding amended claim 10:

"However, Wachi and Clynes fail to disclose or suggest several of the recitations of Claim 10. For example, the cited references do not disclose or suggest "replacing a specification of an instrument provided in the music score file...with a substitute specification of an instrument having brighter timbre," as recited by Claim 10."

Examiner respectfully disagrees. Amended claim 10 changes the scope of the claim because of the deletion of alternative limitation "and/or by transposing frequency data in the music score file to a higher frequency range." Therefore, further consideration and/or search would be needed.

Applicant asserts on pages 8-9, regarding claim 4:

"Applicant submits that the cited references fail to disclose or suggest at least such a "transposition of frequency data in the music score file to a higher frequency range," as recited by Claim 4. . . . otherwise, a first waveform signal containing a tone corresponding to the designated pitch is generated. See Wachi, Abstract More particularly, in generating the pseudo low tone, Wachi notes that "the first waveform signal and the second waveform signal are mixed with each other to provide the music tone containing the pseudo low tone." Wachi, Paragraph 0008 (underline added). See also Wachi paragraph 009 to 0014."

Examiner respectfully disagrees. As presented in the Final Office Action, Wachi discloses "transposition of frequency data in the music score file to a higher frequency range," in paragraph [0272], i.e., a frequency (240 Hz) higher than the lowest frequency (120 Hz) by one octave is set as the pseudo low tone start frequency.

Applicant further asserts on page 9, regarding claim 16:

"Wachi may describe generating a higher-pitch waveform for particular low-frequency tones that are lower than the critical frequency of a specified sound system, Wachi does not disclose or suggest transposing all of the frequency data in a music score file to a higher frequency."

Examiner respectfully disagrees. Since Wachi set one octave higher at start frequency, see Wachi para [0272], it is considered the entire score file has one octave higher.

As such the claims remain rejected.